

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CARLOS PINEDA and ALEXANDRA PEREZ,
Plaintiffs,

v.

DANIEL KEELER, DENNIS HARRIS, JOSEPH R.
WATTS, JOSEPH P. TOOMEY, WILLIAM J.
GALLAGHER, EDWARD GATELY, JANINE
BUSBY, and the CITY OF BOSTON,
Defendants

C.A. No. _____

Rein
MAGISTRATE JUDGE

FILED OFFICE
2005 FEB - 2 P M
U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS
RECEIPT # *61800*
AMOUNT \$ *150*
SUMMONS ISSUED *YES*
LOCAL RULE 4.1 *1*
WAIVER FORM *1*
MCF ISSUED
BY DPTY. CLK. *out*
DATE *2/3/05*

COMPLAINT

1. This is an action for money damages for the violation of the plaintiffs' constitutional rights brought pursuant to 42 U.S.C. §1983 and M.G.L. c.12, §111. Plaintiff Carlos Pineda alleges that defendant police officers and in particular defendant Officers Daniel Keeler and Dennis Harris, arrested and detained him without probable cause in violation of his rights under the Fourth and Fourteenth Amendments of the United States Constitution. The plaintiff further alleges that the defendant police officers used excessive force against him during their arrest. Defendants also conducted an unreasonable search of the plaintiffs' apartment.

The City of Boston is liable to the plaintiff for failing to supervise and train its subordinate police officers on the appropriate and legal procedures of seizing, arresting and detaining suspects and the use of force. It has tolerated a custom and practice in which individuals are detained, seized, and/or arrested without probable cause. In addition, the City of Boston has a custom of not punishing officers who violate the constitutional rights of citizens. Its Internal Affairs Division has a long history of inaction and of covering up misconduct by officers. Thus, officers feel that they can violate the rights of citizens with impunity.

JURISDICTION

2. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§1331 and 1343 and pendant jurisdiction of state claims.

PARTIES

3. Plaintiff Carlos Pineda is a resident of Boston and the Commonwealth of Massachusetts.

4. Plaintiff Alexandra Perez is a resident of Boston and the Commonwealth of Massachusetts.

5. Defendant Daniel Keeler was a duly appointed police officer employed by the City of Boston at all times relevant to the complaint and is sued in his individual capacity.

6. Defendant Dennis Harris was a duly appointed police officer employed by the City of Boston at all times relevant to the complaint and is sued in his individual capacity.

7. Defendant Joseph R. Watts was a duly appointed police officer employed by the City of Boston at all times relevant to the complaint and is sued in his individual capacity.

8. Defendant Joseph Toomey was a duly appointed police officer employed by the City of Boston at all times relevant to the complaint and is sued in his individual capacity.

9. Defendant William Gallagher was a duly appointed police officer employed by the City of Boston at all times relevant to the complaint and is sued in his individual capacity.

10. Defendant Edward Gately was a duly appointed police officer employed by the City of Boston at all times relevant to the complaint and is sued in his individual capacity.

11. Defendant Janine Busby was a duly appointed police officer employed by the City of Boston at all times relevant to the complaint and is sued in her individual capacity.

12. Defendant City of Boston is a municipality duly authorized under the law of the Commonwealth of Massachusetts.

FACTS

13. In April 28, 2003, a person was shot at a Mobil gas station in Boston.

14. The police believed that the shooter was in a white Honda.

15. The police followed a white Honda, but the wrong one.

16. The Honda stopped at 11 Fenway Heights in Boston

17. The police traced the driver to apartment #81, where the Plaintiffs lived.

18. Plaintiff Pineda answered the police knock at his door where he was greeted by several police officers with guns drawn.

19. Plaintiff Pineda noticed that his car was not where he had parked it and asked the police if they had seen it.

20. The defendants responded by accusing Plaintiff Pineda of driving the "white Honda". They grabbed him.

21. They slammed him against a wall twice.

22. The defendants removed the driver of the white Honda from the apartment after arresting him in front of a small child. He had borrowed Plaintiff Pineda's car without his permission.

23. Plaintiff Alexandra Perez attempted to get her children, but a white male officer and a black female officer would not let her protect her children. Instead, they held her in the kitchen. Defendant Busby asked if she had a record. She replied that she "had a good one." Defendant Busby then said, "not for long" and threatened to call DSS.

24. The defendants, with guns drawn, searched the apartment. They flipped over mattresses, threw clothes on the floor, opened bureau drawers, dumped trash on the floor, searched under beds, and removed boxes from closets, all without obtaining a warrant.

25. The defendants started the search before asking for permission to search.

26. Finally, the defendants handcuffed and led Plaintiff Pineda out of the apartment in his underwear in front of the news cameras.

27. Television news reports showing Plaintiff Pineda under arrest and in handcuffs were continuously shown on all of the major channels over a two-day period.

28. Plaintiff Pineda was put in a cell at the police station.

29. After a few hours, Plaintiff Pineda was released without charges.

FIRST COUNT
VIOLATION OF 42 U.S.C. § 1983 BY INDIVIDUAL DEFENDANTS

30. The Plaintiffs restate and reallege the allegations in paragraphs 1 through 29 and incorporates said paragraphs herein as paragraph 30.

31. By the actions described in paragraphs 1 through 30, the individual defendants deprived Plaintiffs of the following rights in violation of 42 U.S.C. §1983 and of their Fourth and Fourteenth Amendment Rights as guaranteed by the United States Constitution:

- a. Freedom from an unreasonable seizure of Plaintiff Pineda's person.
- b. Freedom from the use of excessive and unreasonable force on Plaintiff Pineda.
- c. Freedom from arrest without probable cause of Plaintiff Pineda;
- d. Freedom from unreasonable searches of the apartment of Plaintiff Pineda and Perez.

SECOND COUNT
VIOLATION OF 42 U.S.C. §1983 BY DEFENDANTS
WATTS AND TOOMEY.

32. The plaintiff restates and realleges paragraphs 1 through 31 and incorporates said paragraphs herein as paragraph 32.

33. Defendants Watts and Toomey were supervisors on the night in question at the scene of the incidents.

34. These defendants were deliberately indifferent to the rights of the Plaintiffs by failing to adequately supervise the individual defendants who they knew or should have known were engaging in violations of the Plaintiffs' constitutional rights. Their conduct demonstrated tacit approval of the individual unconstitutional practices. Complaints against these officers were sustained by the Boston Police Department after an Internal Affairs investigation.

THIRD COUNT
VIOLATION OF 42 U.S.C. §1983 BY DEFENDANT CITY OF BOSTON

35. The plaintiff restates and realleges paragraphs 1 through 34 and incorporates said paragraphs herein as paragraph 35.

36. The defendant City of Boston has a custom and policy of deliberate indifference to the rights of its citizens:

- a. By failing to adequately train their police officers on the proper use of force and arrest procedures.
- b. By failing to adequately train, supervise, and discipline officers who are prone to using excessive force.
- c. By failing to have an internal affairs procedure that is effective.

FOURTH COUNT
VIOLATION OF M.G.L. c. 12, §11I BY INDIVIDUAL DEFENDANTS.

37. The plaintiffs restate and reallege paragraphs 1 through 36 and incorporates said paragraphs herein as paragraph 37.

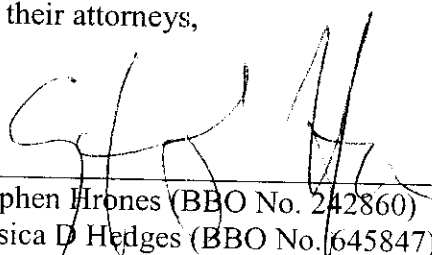
38. By the actions described in paragraphs 1 through 37, the individual defendants violated the Plaintiffs' civil rights provided for in M.G.L. c.12, §11I by threats, intimidation, and coercion.

WHEREFORE, the plaintiff requests this Court to:


1. Award compensatory damages against the defendants jointly and severally;
2. Award punitive damages against the individual defendant police officers of the City of Boston;
3. Award costs of this action, including reasonable attorneys' fees, to the plaintiffs;
4. Award any such other relief as this Court may deem necessary and appropriate.

A jury trial is hereby demanded.

Respectfully submitted,
The Plaintiffs Carlos Pineda
and Alexandra Perez,
By their attorneys,



Stephen Hrones (BBO No. 242860)
Jessica D. Hedges (BBO No. 645847)
HRONES GARRITY & HEDGES LLP
Lewis Wharf-Bay 232
Boston, MA 02110-3927
T)617/227-4019

Dated: February , 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Carlos Pineda, et al. v. Daniel Keeler, et al.

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- X I. 160, 400, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 135, 365, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.
N/A

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES

NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES

NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES

NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES

NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES

NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Stephen HronesADDRESS Lewis Wharf-Bay 232, Boston, MA 02110TELEPHONE NO. 617/227-4019

(Cover sheet local.wpd - 11/27/00)

FILED
CLERK'S OFFICE
2005 FEB -2 P 4:04
U.S. DISTRICT COURT
DISTRICT OF MASS.

Also complete AO 121
patent, trademark, copyright cases

05 10216 JLT

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

Carlos Pineda and Alexandra Perez

DEFENDANTS

Daniel Keeler, Dennis Harris, William J Gallagher, Joseph B. Watts, Joseph P Toomey, Edward Gateby, Janine Ruby, and the City of Boston

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Suffolk
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Stephen Hrones, Esq.
Hrones Garrity & Hedges
Lewis Wharf-Bay 232, Boston, MA 02110
617/227-4019

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☒ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | |
|----------------------------|----------------------------|---|----------------------------|----------------------------|
| PTF | DEF | | PTF | DEF |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Citizen of This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Citizen of Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| | | Incorporated or Principal Place of Business in This State | | |
| | | Incorporated and Principal Place of Business in Another State | | |
| | | Foreign Nation | | |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

42 USC §1983

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
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VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A UNDER F.R.C.P. 23

CLASS ACTION

DEMAND \$
TBD

Check YES only if demanded in complaint:

JURY DEMAND: XX YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT